

105TH CONGRESS  
1ST SESSION

# H. R. 2603

To amend title 28, United States Code, with respect to arbitration in United States district courts, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 1997

Mr. COBLE (for himself and Mr. GOODLATTE) introduced the following bill;  
which was referred to the Committee on the Judiciary

---

## A BILL

To amend title 28, United States Code, with respect to arbitration in United States district courts, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Alternative Dispute  
5       Resolution and Settlement Encouragement Act”.

6       **SEC. 2. ARBITRATION IN DISTRICT COURTS.**

7       (a) AUTHORIZATION OF APPROPRIATIONS.—Section  
8       905 of the Judicial Improvements and Access to Justice  
9       Act (28 U.S.C. 651 note) is amended in the first sentence

1 by striking “for each of the fiscal years 1994 through  
2 1997”.

3 (b) ARBITRATION TO BE ORDERED IN ALL DISTRICT  
4 COURTS.—

5 (1) AUTHORIZATION OF ARBITRATION.—Section  
6 651(a) of title 28, United States Code, is amended  
7 to read as follows:

8 “(a) AUTHORITY.—Each United States district court  
9 shall authorize by local rule the use of arbitration in civil  
10 actions, including adversary proceedings in bankruptcy, in  
11 accordance with this chapter.”.

12 (2) ACTIONS REFERRED TO ARBITRATION.—  
13 Section 652(a) of title 28, United States Code, is  
14 amended—

15 (A) in paragraph (1)—

16 (i) in the matter preceding subpara-  
17 graph (A) by striking “and section 901(c)”  
18 and all that follows through “651” and in-  
19 serting “a district court”; and

20 (ii) in subparagraph (B) by striking  
21 “\$100,000” and inserting “\$150,000”;  
22 and

23 (B) in paragraph (2) by striking  
24 “\$100,000” and inserting “\$150,000”.

1           (3) CERTIFICATION OF ARBITRATORS.—Section  
 2           656(a) of title 28, United States Code, is amended  
 3           by striking “listed in section 658”.

4           (4) REMOVAL OF LIMITATION.—Section 658 of  
 5           title 28, United States Code, and the item relating  
 6           to such section in the table of sections at the begin-  
 7           ning of chapter 44 of title 28, United States Code,  
 8           are repealed.

9           (c) CONFORMING AMENDMENT.—Section 901 of the  
 10          Judicial Improvements and Access to Justice Act (28  
 11          U.S.C. 652 note) is amended by striking subsection (c).

12       **SEC. 3. AWARD OF REASONABLE COSTS AND ATTORNEY’S**  
 13                               **FEES IN FEDERAL CIVIL DIVERSITY LITIGA-**  
 14                               **TION AFTER AN OFFER OF SETTLEMENT.**

15          Section 1332 of title 28, United States Code, is  
 16          amended by adding at the end the following:

17          “(e)(1) In any action over which the court has juris-  
 18          diction under this section, any party may, at any time not  
 19          less than 10 days before trial, serve upon any adverse  
 20          party a written offer to settle a claim or claims for money  
 21          or property or to the effect specified in the offer, including  
 22          a motion to dismiss all claims, and to enter into a stipula-  
 23          tion dismissing the claim or claims or allowing judgment  
 24          to be entered according to the terms of the offer. Any such

1 offer, together with proof of service thereof, shall be filed  
2 with the clerk of the court.

3 “(2) If the party receiving an offer under paragraph  
4 (1) serves written notice on the offeror that the offer is  
5 accepted, either party may then file with the clerk of the  
6 court the notice of acceptance, together with proof of serv-  
7 ice thereof.

8 “(3) The fact that an offer under paragraph (1) is  
9 made but not accepted does not preclude a subsequent  
10 offer under paragraph (1). Evidence of an offer is not ad-  
11 missible for any purpose except in proceedings to enforce  
12 a settlement, or to determine costs and expenses under  
13 this subsection.

14 “(4) At any time before judgment is entered, the  
15 court, upon its own motion or upon the motion of any  
16 party, may exempt from this subsection any claim that  
17 the court finds presents a question of law or fact that is  
18 novel and important and that substantially affects nonpar-  
19 ties. If a claim is exempted from this subsection, all offers  
20 made by any party under paragraph (1) with respect to  
21 that claim shall be void and have no effect.

22 “(5) If all offers made by a party under paragraph  
23 (1) with respect to a claim or claims, including any motion  
24 to dismiss all claims, are not accepted and the judgment,  
25 verdict, or order finally issued (exclusive of costs, ex-

1 penses, and attorneys' fees incurred after judgment or  
2 trial) in the action under this section is not more favorable  
3 to the offeree with respect to the claim or claims than the  
4 last such offer, the offeror may file with the court, within  
5 10 days after the final judgment, verdict, or order is is-  
6 sued, a petition for payment of costs and expenses, includ-  
7 ing attorneys' fees, incurred with respect to the claim or  
8 claims from the date the last such offer was made or, if  
9 the offeree made an offer under this subsection, from the  
10 date the last such offer by the offeree was made.

11       “(6) If the court finds, pursuant to a petition filed  
12 under paragraph (5) with respect to a claim or claims,  
13 that the judgment, verdict, or order finally obtained is not  
14 more favorable to the offeree with respect to the claim or  
15 claims than the last offer, the court shall order the offeree  
16 to pay the offeror's costs and expenses, including attor-  
17 neys' fees, incurred with respect to the claim or claims  
18 from the date the last offer was made or, if the offeree  
19 made an offer under this subsection, from the date the  
20 last such offer by the offeree was made, unless the court  
21 finds that requiring the payment of such costs and ex-  
22 penses would be manifestly unjust.

23       “(7) Attorney's fees under paragraph (6) shall be a  
24 reasonable attorney's fee attributable to the claim or  
25 claims involved, calculated on the basis of an hourly rate

1 which may not exceed that which the court considers ac-  
 2 ceptable in the community in which the attorney practices  
 3 law, taking into account the attorney's qualifications and  
 4 experience and the complexity of the case, except that the  
 5 attorney's fees under paragraph (6) may not exceed—

6           “(A) the actual cost incurred by the offeree for  
 7       an attorney's fee payable to an attorney for services  
 8       in connection with the claim or claims; or

9           “(B) if no such cost was incurred by the offeree  
 10      due to a contingency fee agreement, a reasonable  
 11      cost that would have been incurred by the offeree for  
 12      an attorney's noncontingent fee payable to an attor-  
 13      ney for services in connection with the claim or  
 14      claims.

15      “(8) This subsection does not apply to any claim  
 16 seeking an equitable remedy.”.

17 **SEC. 4. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

18      (a) SECTION 2.—The amendments made by section  
 19 2 shall take effect on the date of the enactment of this  
 20 Act.

21      (b) SECTION 3.—

22           (1) IN GENERAL.—Subject to paragraph (2),  
 23      the amendment made by section 3 shall take effect  
 24      on the first day of the first month beginning more

1       than 180 days after the date of the enactment of  
2       this Act.

3           (2)   APPLICATION    OF    AMENDMENT.—The  
4       amendment made by section 3 shall apply only with  
5       respect to civil actions commenced after the effective  
6       date set forth in paragraph (1).

○